Bank of America Tower
50 N. Laura Street, Suite 2600
Jacksonville, Florida 32202
Tel: 904 598-6100
www.sgrlaw.com

SMITH, GAMBRELL & RUSSELL, LLP
Attorneys at Law

Patricia J. Hill
Direct Tel: 904-598-6140
Direct Fax: 904-598-6240
pjhill@sgrlaw.com

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VIA CM/ECF

Office of the Clerk
United States Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 S. Dearborn Street
Room 2722
Chicago, Illinois 60604

Re: Case No. 20-2482, *Hadsall v. Sunbelt Rentals, Inc.*
Response to Appellee-Petitioner's January 25, 2021 Letter

Dear Clerk's Office:

Appellant-Respondent Sunbelt Rentals, Inc. ("Respondent") submits this letter in response to Appellee-Petitioner National Labor Relations Board's ("Petitioner") January 25, 2021 letter addressing *Nat'l Labor Relations Bd. v. Express Publ'g Co.*, 312 U.S. 426 (1941), and the District Court's overbroad injunction order prohibiting Respondent from violating the National Labor Relations Act in "any other manner." Petitioner argues that the overbroad order is proper because: (1) *Express Publishing* does not "foreclose the possibility of a broad order," and (2) cases from the Seventh Circuit and other Circuits support the overbroad order. Petitioner's arguments fail because *Express Publishing* and the other cases Petitioner cited prohibit the overly broad order in this case. For the reasons set forth herein, as well as the reasons set forth in Respondent's previously-filed Briefs and during oral argument, the Court should reverse the District Court's overbroad injunction order.

A. *Express Publishing* prohibits an overly broad order.

First, *Express Publishing* does not allow a broad order prohibiting Respondent from violating the National Labor Relations Act ("NLRA") "in any other manner" in this case. In *Express Publishing*, the United States Supreme Court ruled that a National Labor Relations Board ("NLRB") order enjoining an employer from interfering with its employees' NLRA rights "in any manner" was improperly overbroad. 312 U.S. at 433. The Supreme Court explained that, although the NLRB determined the employer violated the NLRA, the NLRB was not "justified in making a blanket order restraining the employer from committing any act in violation of the statute, however

unrelated it may be to those charged and found." *Id.* The Supreme Court further explained that an NLRB order must be specific because an overbroad order enjoining an employer from violating the NLRA in any manner subjects an employer to contempt proceedings wholly unrelated to the conduct addressed in the order:

> It is obvious that the order of the Board, which when judicially confirmed, the courts may be called on to enforce by contempt proceedings, must, like the injunction order of a court, state with reasonable specificity the acts which the respondent is to do or refrain from doing. It would seem equally clear that the authority conferred on the Board to restrain the practice which it has found the employer to have committed is not an authority to restrain generally all other unlawful practices which it has neither found to have been pursued not persuasively to be related to the proven unlawful conduct.

Id. at 433. The Court also clearly stated that federal courts only have the power to "restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future unless enjoined, may fairly be anticipated from the defendant's conduct in the past." *Id.* at 435; *see also id.* at 436 ("It is a salutary principle that when one has been found to have committed acts in violation of a law he may be restrained from committing other *related* unlawful acts." (emphasis order)). Therefore, *Express Publishing* holds that an injunction may only enjoin a party from conduct in which the party already engaged or related conduct.

Petitioner clings to one sentence in the decision to support its position that *Express Publishing* allows the overly broad order in this case: "To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past." *Id.* at 437. However, Petitioner ignores the Court's immediately previous statement that the NLRB may not enjoin an employer from violating the NLRA in its entirety where the employer only violated certain provisions: "We hold only that the National Labor Relations Act does not give the Board an authority, which courts cannot rightly exercise, to enjoin violations of all the provisions of the statute merely because the violation of one has been found." *Id.* at 437. Petitioner also ignores the Court's requirement that a District Court provide reasoning for a broad injunction order. *Id.* (noting "[t]hat justification [for a broad order] is lacking here").

Express Publishing does not support the overly broad injunction in this case because Respondent did not violate the NLRA in its entirety.[1] Rather, in granting Petitioner's request for injunction, the District Court ruled that Petitioner had a likelihood of success in establishing that

[1] Respondent contends that it did not violate any part of the NLRA. For purposes of this letter, Respondent assumes, but does not admit, that the District Court did not err in determining that Petitioner has a likelihood of success in establishing that Respondent violated portions of the NLRA.

Respondent violated three sections of the NLRA—namely sections 8(a)(1), (a)(3), and 8(a)(5). *See* District Court Order, p. 22. Because the District Court's Order only addressed Respondent's conduct in relation to three sections of the NLRA, an injunction enjoining Respondent from violating the NLRA "in any other manner" is improperly overbroad. Further, even if Respondent's supposed violations of those three sections warranted the broad order, which Respondent denies, the District Court did not provide justification for the broad order. Rather, the District Court ruled that Respondent's violations of Sections 8(a)(1), (3), and (5) of the NLRA "will likely be repeated or continued unless enjoined." *See id.* The District Court did not address whether and why Respondent was likely to violate any other section of the NLRA to support the overly broad order, and, therefore, *Express Publishing* does not support the overly broad order in this case. Accordingly, this Court should reverse the order.

B. Other precedent also prohibits overbroad injunction order.

In addition to *Express Publishing*, decisions of this Court and other Circuits likewise do not support Petitioner's position. Petitioner first cited *U.S. v. Ellis Research Labs. Inc.*, 300 F.2d 550 (7th Cir. 1962) to support its argument, even though this case involves the Food, Drug, and Cosmetic Act, not the NLRA, and does not involve an overly broad injunction order. In *Ellis Research Labs.*, the United States sought to enjoin Ellis Research Laboratories from "shipping in interstate commerce a misbranded device intended for use in diagnosis of disease." *Id.* at 562. The District Court granted the relief requested and enjoined Ellis Research Laboratories from, among other things, "introducing [the device] into interstate commerce unless accompanied by written manner which states every purpose for which it is intended to be used." *Id.* at 554. Ellis Research Laboratories appealed this part of the injunction, and argued that the District Court erred in enjoining it from selling the device without a written statement regarding the purpose for the device because Ellis Research Laboratories had not previously engaged in that conduct. This Court affirmed the District Court's injunction and explained that, without the portion of the injunction regarding the written statement, Ellis Research Laboratories "could have introduced the [device] into interstate commerce without violating the injunction simply by failing to include in the labeling a statement of all purposes for which it was intended to be used." *Id.* at 555. Although the injunction enjoined Ellis Research Laboratories from engaging in conduct in which it had not previously engaged, the injunction was narrowly tailored to address specific conduct and did not enjoin Ellis Research Laboratories from generally violating the Food, Drug, and Cosmetic Act. In the present case, on the other hand, the District Court did not narrowly tailor the injunction order to address specific conduct when it enjoined Respondent from violating the NLRA "in any other manner." Therefore, the District Court's order is improperly overbroad.

Likewise, none of the other Seventh Circuit cases Petitioner cited support the overly broad order in this case. For example, in *Nat'l Labor Relations Bd. v. Reynolds Wire Co.*, 121 F.2d 627 (7th Cir. 1941), this Court affirmed a broad NLRB order because "the record reveals 'persistent attempts by varying methods to interfere with the right of self-organization.'" *Id.* at 630. Similarly, in *Nat'l Labor Relations Bd. v. Aintree Corp.*, 132 F.2d 469 (7th Cir. 1942), this Court affirmed an NLRB order requiring the employer "to cease and desist from in any manner interfering with its employees in the exercise of their right to self-organization" because specific facts were identified to support such a broad order. *Id.* at 473. In *Reynolds Wire Co.*, the employer

engaged in severe violations of the NLRA, including organizing employees to form a company union rather than bringing in an outside union and interfering with the employees' right to organize for approximately two years. 121 F.2d 627. Similarly, in *Aintree Corp.*, the employer engaged in severe violations of the NLRA, such as forming a rival union to stop a union from coming in. 132 F.2d 469.

Here, Respondent did not violate the NLRA, and, even if it did, Respondent did not engage in severe conduct as that found in *Reynolds Wire Co.* and *Aintree Corp*. For example, Respondent did not take any steps to prevent the union election, and, after the bargaining unit employees voted in favor of organizing, Respondent negotiated with the Union to reach a collective bargaining agreement. Respondent did not engage in egregious conduct such as attempting to form another union to prevent the Local 139 from representing the employees at the Franksville location. Therefore, neither *Reynolds Wire Co.* nor *Aintree Corp.* supports an overly broad order here because Respondent did not engage in severe conduct to justify a broad order and the District Court failed to identify the specific conduct to justify its broad order.

Additionally, the other Seventh Circuit cases Petitioner cited are distinguishable from the present case because in those cases, the applicable order enjoined employers from engaging in specific conduct, rather than general violations of the NLRA:

- In *Perry Coal Co. v. Nat'l Labor Relations Bd.*, 284 F.2d 910 (7th Cir. 1960), this Court struck down an overbroad NLRB order and explained that the NLRB's "order should be limited to [the] actual unfair labor practices in this case." *Id.* at 917. Here, the District Court did not properly limit the injunction order to the "actual unfair labor practices" at issue because, even though the District Court ruled that Petitioner has a likelihood of success in establishing that Respondent violated three specific sections of the NLRA, the District Court enjoined Respondent from violating the NLRA "in any other manner."

- In *Nat'l Labor Relations Bd. v. Am. Furnace Co.*, 158 F.2d 376 (7th Cir. 1946), this Court upheld an NLRB order enjoining the employer from engaging in specific conduct in violation of the NLRA. *Id.* at 377. In the present case, the District Court improperly broadly enjoined Respondent from violating the NLRA "in any other manner."

- In *Nat'l Labor Relations Bd. v. Jasper Chair Co.*, 138 F.2d 756 (7th Cir. 1943), the NLRB required the employer to "cease and desist from the unfair labor practices found." *Id.* at 757. Here, the District Court improperly ordered Respondent to cease and desist from violating the NLRA "in any other manner," rather than limiting the order to the specific unfair labor practices at issue in this case.

Finally, decisions from other Circuits that Petitioner cited do not support the overbroad injunction here because those cases involved extreme, repeated conduct not present here:

- In *Federated Logistics & Operations v. Nat'l Labor Relations Bd.*, 400 F.3d 920 (D.C. Cir. 2005), the court affirmed a broad order after the employer "unlawfully

made threats of the futility of unionization, withheld a wage increase, and disciplined two employees for engaging in union activity . . . [and] also committed *six* other unfair labor practices." *Id.* at 929 (emphasis in original). Here, Respondent committed, at most, three unfair labor practices, so Respondent's conduct does not justify such a broad injunction order. Additionally, the District Court did not explain its basis for the broad order, even though it was required to do so. *See id.* at 936 ("[W]e have made clear that it is not enough for the Board to justify an extraordinary remedy 'simply by reciting the employer's unfair labor practices and commenting on their gravity.'" (LeCraft Henderson, J., dissenting)).

- In *Nat'l Labor Relations Bd. v. U.S. Postal Serv.*, 486 F.3d 683, 690 (10th Cir. 2007), the court affirmed a broad order "where the defendant ha[d] engaged in 'persistent attempts by varying methods to interfere with employee rights.'" *Id.* at 690. In that case, the court acknowledged that whether a broad order was proper "was a close call," but the employer's history of violating the NLRA justified the broad order. *Id.* Here, Respondent does not have a history of violating the NLRA to justify a broad order, and, even if it did, the District Court did not cite that as a basis for its broad order.

- In *Nat'l Labor Relations Bd. v. Metro. Reg'l Council of Carpenters*, 316 Fed. App'x 150 (3d Cir. 2009), the court ruled that a broad order was justified in part because the Union violated the NLRA after the Court already entered "two separate judgments enforcing orders against the Union." *Id.* at 160. Likewise, in *Nat'l Labor Relations Bd. v. Local 3, Int'l Bhd. of Elec. Workers*, 730 F.2d 870, (3d Cir. 1984), the court upheld a broad order against the Union because of the Union's history of violating the NLRA. Here, the District Court's order enjoining Respondent from violating the NLRA "in any other manner" is the first order the District Court entered against Sunbelt, and Sunbelt has no history of violating the NLRA.

A broad order is an extraordinary remedy, and the unique circumstances to support a broad order are not present in this case.

In sum, the District Court erred in enjoining Respondent from violating the NLRA "in any other manner." The District Court ruled that Petitioner demonstrated a likelihood of success in establishing that Respondent violated three specific sections of the NLRA, yet the District Court enjoined Respondent from violating the entirety of the NLRA. Further, the District Court did not explain its basis for such a broad injunction. Therefore, applicable law does not support the overly broad injunction order here.

For the reasons set forth herein, as well as in Respondent's previously-filed briefs and oral argument, this Court should reverse the District Court's overly broad order. Respondent requests this Court reverse the District Court's order in its entirety, but to the extent this Court declines to do so, Respondent requests this Court reverse the portion of the order enjoining Respondent from violating the NLRA "in any other manner."

Sincerely,

s/ Patricia J. Hill

Patricia J. Hill
E-mail: pjhill@sgrlaw.com
Yash B. Dave
E-mail: ydave@sgrlaw.com
50 N. Laura Street, Suite 2600
Jacksonville, FL 32202
Telephone: (904) 598-6100
Facsimile: (904) 598-6240
Attorneys for Appellant-Respondent Sunbelt Rentals, Inc.

PJH/YBD/eet

cc: Laura T. Vazquez, Deputy Assistant General Counsel, National Labor Relations Board
Chad A. Wallace, Attorney, National Labor Relations Board